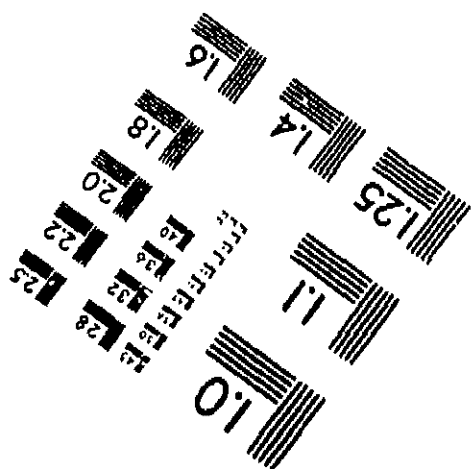
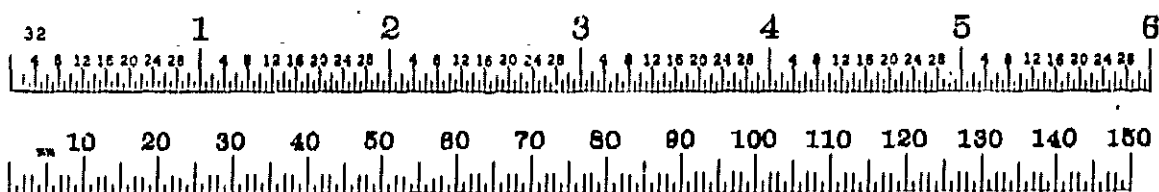
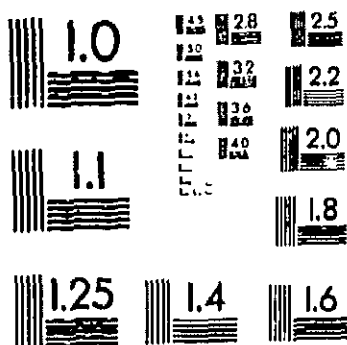
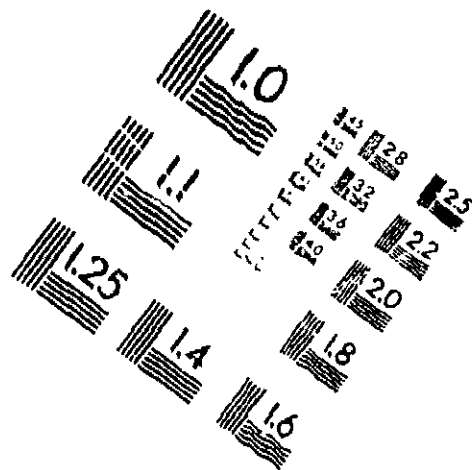
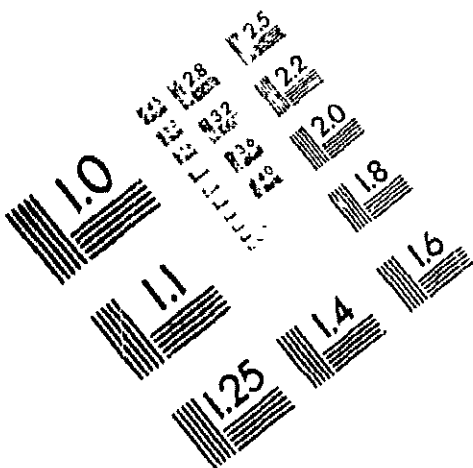
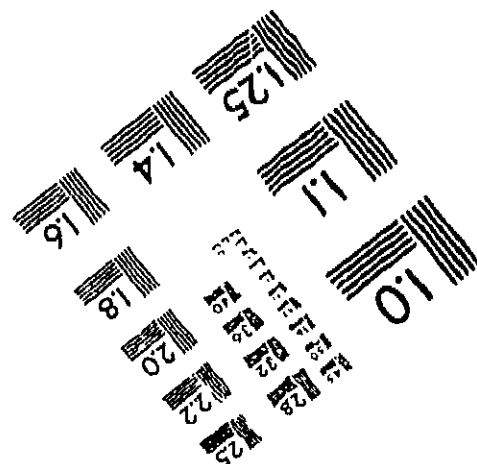


# IMAGE EVALUATION TEST TARGET (MT-3)



**APPLIED IMAGE**  
1653 E. MAIN STREET  
ROCHESTER, NY 14609  
TEL (716) 482-0300  
FAX (716) 288-5989



**A**

**B**

**C**

**D**

**E**

**F**





Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Machineworks, Inc.

**File No.:** B-258123

**Date:** December 12, 1994

Ronald T. Walker for the protester.  
Jerry Sukman for Command Components Corporation, an interested party.  
Jonathan Cramer, Esq., Department of Justice, for the agency.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency decision to require bid samples in lieu of technical proposals and first article testing is reasonable where: (1) solicitation contained detailed drawings and technical specifications enabling bidders to manufacture noncomplex component parts; and (2) agency did not have adequate specifications to describe facility of use characteristics it required in the components.
2. Protest challenging 30-day time limit for preparation and submission of bid samples is denied where: (1) agency has presented un rebutted evidence that 30 days constitutes reasonable and sufficient time within which to produce non-complex component parts; (2) several offerors have complied with 30-day submission requirement under previous procurements; and (3) as a result of pre-solicitation notice published in the Commerce Business Daily, prospective bidders actually had 45 days to prepare a bid sample.

### DECISION

Machineworks, Inc. protests the terms of invitation for bids (IFB) No. 1PI-B-1053-94, issued by the Federal Prison Industries, Inc. (UNICOR)<sup>1</sup>, Department of Justice, for

<sup>1</sup>Federal Prison Industries, Inc., which operates under the trade name UNICOR, is a wholly-owned government corporation within the Department of Justice, under the federal prison system. UNICOR was created by Congress in 1934, and

eight cap and handle assembly component parts, which will be assembled by UNICOR and sold to other government users for the fabrication of a connector--an integral component of most high density lighting fixtures. In its protest, Machineworks argues that the solicitation's bid sample specification is unduly restrictive.

We deny the protest.

On July 8, 1994, UNICOR issued the solicitation to approximately 40 contractors, including Machineworks. The IFB required bidders to manufacture eight separate component items--which, when assembled, would form a cap and handle assembly. The eight required items were: a handle; a retaining screw; a spring plate; a cap; a retaining ring; an "O" ring; and two washers of different sizes. The IFB included detailed drawings and technical specifications for the manufacture of each component. The IFB specified that bidders were to submit these components in a disassembled state--and that those bidders who had never produced these items for UNICOR before would be required to submit a bid sample of the eight component parts with their bids.

Machineworks claims that the bid sample requirement is unduly restrictive. First, the protester maintains that because of the costs required to produce a bid sample, the agency should instead require technical proposals and first article testing. Machineworks also argues that the 30-day time frame set forth in the IFB for preparing and submitting a bid sample is unduly restrictive since--according to the protester--the cap and hood assembly component parts require at least 10 weeks to produce. As relief, Machineworks requests that the IFB and bid sample requirement be converted to a negotiated procurement with a first article testing requirement, or, alternatively, that the current bid sample submission requirement be extended to accommodate a 10-week bid sample manufacturing period.

Under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a) (1988), contracting agencies are required to obtain full and open competition and, in doing so, are required to use competitive procedures--negotiation or sealed bids--that they determine to be best suited to the circumstances of a given procurement. 41 U.S.C. § 253(a)(1); Military Base Management, Inc., 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720. CICA, and the implementing Federal Acquisition Regulation (FAR) provisions, further provide that, in determining which competitive procedure

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<sup>1</sup>(...continued)

provides employment, education, and training opportunities to inmates under federal custody.

is appropriate, an agency shall solicit sealed bids if: (1) time permits; (2) award will be made solely on price; (3) discussions are not necessary; and (4) the agency reasonably expects to receive more than one sealed bid. 41 U.S.C. § 253(a)(2)(A); FAR § 6.401; Premiere Vending, B-256437, June 23, 1994, 94-1 CPD ¶ 380. Negotiated procedures are only authorized if sealed bids are not appropriate under 41 U.S.C. § 253(a)(2)(A).

With respect to whether bid samples or first article testing procedures should be used, FAR § 14.202-4(b)(1) precludes procuring agencies from requiring bidders to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specifications. FAR § 14.202-4(c) indicates that it is appropriate to request bid samples for products that must be suitable from the standpoint of balance, facility of use, general feel, color, pattern, or other characteristics that cannot be described adequately in the specifications. However, "when more than a minor portion of the characteristics of the product cannot be adequately described in the specification," the FAR provides that such "products should be acquired by two-step sealed bidding, or negotiation"--which would generally require first article testing, in lieu of bid samples. Id.

In this case, the agency asserts that there are two required characteristics of the cap and hood assembly components which cannot be articulated in a written specification. First, the agency reports that it needs a bid sample to ensure that the components are technically compatible with other components used to fabricate the connector end item. Next, the agency states that it also needs to procure a bid sample to guarantee the color and quality of the components' metal plating. In this regard, the IFB specified that "visual, air/water testing and plating, and deburring" evaluations of the bid samples would be performed.

While the protester asserts that technical proposals and first article testing would better suit the agency's needs, UNICOR responds that because the hood and cap assembly components are not technically complex items, the current IFB and bid sample requirement best suit its minimum needs. To that end, UNICOR explains that a negotiated procurement with first article testing is not feasible in this case because of the risk of contracting for an unacceptable item, and the time delays first article testing involves. In this regard, negotiated procurements with first article testing typically require 60 to 90 days for first article production, as well as additional time for government testing and certification. Additionally, the agency reports that because detailed technical drawings and specifications are already in existence and set forth in the IFB, technical proposals for manufacturing this item are not required, and

would be redundant. That is, the agency only requires a competent contractor to produce the required component items in accordance with the existing specifications. Finally, the agency notes that the alleged costs of manufacturing new component items can be recouped equally by bidders through their bid or proposal prices.

Given UNICOR's mission to manufacture various components under strict contract deadlines for sale to other government users--who incorporate the components into an assembled end item, like the high density lighting connector for which these particular components are required--as well as the unavoidable delays inherent in first article testing, we find the agency's use of sealed bidding procedures and the bid sample requirement to be reasonable. Absent using sealed bidding and requiring a bid sample from each bidder, we see no efficient way for the agency to promptly ascertain that the procured component items will work as intended. Where, as here, a bid sample requirement is necessary to guarantee technical compatibility and enable the agency to satisfy its timing requirements, the requirement is unobjectionable.<sup>2</sup> See Pynco, Inc., B-257853, Nov. 16, 1994, 94-2 CPD ¶ \_\_\_\_ (agency decision to require bid samples in lieu of technical proposals is reasonable where the agency did not have adequate specifications to describe the facility of use characteristics it required in procured aircraft test sets); Trimble Navigation Ltd., B-247913, July 13, 1992, 92-2 CPD ¶ 17 (30-day bid sample submission requirement reasonable where record showed that agency was working under time deadline to bring its current equipment into compliance with Department of Defense directive, and record otherwise showed that bidders could reasonably produce the required part within this time frame); Rose, Inc., B-218491.2, Sept. 23, 1983, 83-2 CPD ¶ 318 (bid sample requirement for address labels unobjectionable where necessary to guarantee technical compatibility between labels and printer mechanism).


To the extent the protester claims that 30 days preparation time for submitting a bid sample is unduly restrictive, the agency asserts that given the explicit technical specifications and drawings set forth in the IFB, as well as the fact that the cap and handle component parts do not

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<sup>2</sup>We note that the FAR provisions governing first article testing support our conclusion here. FAR § 9.302(a) indicates that first article testing should not be used if it will significantly impact "cost or time of delivery." Additionally, FAR § 9.304(d) provides that first article testing and approval "is not required" where, as here, the solicitation contains "complete and detailed technical specifications."

require extensive technical preparation or expertise to produce, the allotted 30 days is sufficient time for offerors to generate and submit a component set bid sample. In this regard, UNICOR also reports that other bidders have successfully complied with the same bid sample submission requirement for prior procurements of this item; moreover, the agency points out that for the current requirement, four bidders submitted bid samples by the bid opening deadline.<sup>3</sup> Finally, we note that in addition to the 30-day time window provided by the IFB, because this requirement--along with a list of the required technical drawings and specifications--was synopsized in a June 22 Commerce Business Daily notice, bidders actually had an additional 15 days within which to begin manufacturing the required bid sample.

The protest is denied.

  
for Robert P. Murphy  
General Counsel

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<sup>3</sup>The agency has also furnished this Office with an actual cap and hood assembly item, which supports its position that the component parts are not overly complex to manufacture.